

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KFW Communications LLC)	File Number: EB-10-KC-0018
)	
Owner of Antenna Structure # 1040289)	NAL/Acct. No.: 201132560002
Caldwell, Kansas)	
)	FRN: 0018266676
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 28, 2011

Released: February 28, 2011

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that KFW Communications LLC (“KFW”), owner of antenna structure number 1040289 (“Tower”), located in Caldwell, Kansas, apparently willfully and repeatedly violated section 17.47 of the Commission’s rules (“Rules”)¹ by failing to observe the antenna structure’s lights at least once each 24 hours. We conclude that KFW is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000). Furthermore, we direct KFW to submit a statement certifying compliance with the Commission’s tower lighting rules.²

II. BACKGROUND

2. On March 20, 2010, in response to a complaint that the lights on the Tower had been unlit for several months, an agent from the Enforcement Bureau’s Kansas City Office (“Kansas City Office”) reported the light outage to the Federal Aviation Administration (“FAA”).³ According to the FAA, no Notice to Airmen (“NOTAM”) had been issued on the Tower, but one was issued following the agent’s call.

3. On March 23, 2010, an agent from the Kansas City Office interviewed an employee of KFW, who stated that there was no automatic monitoring system on the Tower and that it had been visually inspected until the responsible technician was laid off several months ago. On June 3, 2010, the Kansas City Office issued a letter of inquiry (“LOI”) to KFW asking for additional information regarding the monitoring of the Tower lights.⁴ On June 18, 2010 and June 30, 2010, KFW filed responses to the LOI.⁵ According to its responses to the LOI, a KFW employee visually inspected the Tower until the cable system

¹ 47 C.F.R. § 17.47.

² See *infra* ¶ 7.

³ See 47 C.F.R. § 17.48 (requiring notification to the FAA of any observed or otherwise known extinguishment or improper functioning of tower lighting).

⁴ See Letter from Robert C. McKinney, District Director, Kansas City Office, to KFW Communications, dated June 3, 2010.

⁵ See Letter from Charles Wesley, Technical Support, KFW, to Robert C. McKinney, District Director, Kansas City Office, dated June 18, 2010 (“*First LOI Response*”); Letter from Charles Wesley, Technical Support, KFW, to Robert C. McKinney, District Director, Kansas City Office, dated June 30, 2010 (“*Second LOI Response*”).

was shut down on September 30, 2009.⁶ KFW also stated that “by October 1, 2009, we did not have any maintenance or contact with the [Tower].”⁷ KFW also stated that they were working to have the Tower lights repaired.

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁸ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

5. Section 17.47(a) of the Rules states that the owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications “(1) [s]hall make an observation of the antenna structure’s lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) [s]hall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.”¹¹ Antenna structure number 1040289 is 61.9 meters above ground and is required to be painted and lit.¹² KFW stated the lights were observed visually by a technician until September 30, 2009, when KFW ceased maintaining their cable system in Caldwell, Kansas.¹³ KFW made no observations of the Tower lights from October 1, 2009 to March 23, 2010. Based on the evidence before us, we find that KFW apparently willfully and repeatedly violated section 17.47 of the Rules by failing to observe visually the Tower lighting at least once each 24 hours between October 1, 2009 and March 23, 2010.

6. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to conduct required monitoring is \$2,000.¹⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of

⁶ *Second LOI Response* at 1.

⁷ *Second LOI Response* at 1.

⁸ 47 U.S.C. § 503(b).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹¹ 47 C.F.R. § 17.47(a).

¹² See 47 C.F.R. § 17.21 (stating that antenna structures are required to be painted and lighted when they exceed 60.96 meters in height above ground).

¹³ *Second LOI Response* at 1.

¹⁴ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁵ Because KFW previously failed to observe visually or monitor with an automatic alarm system the lights on antenna structures in Yorktown and Bloomington, Texas,¹⁶ we conclude an upward adjustment to \$4,000 would be appropriate. Because the duration of KFW's current failure to observe visually the Tower lasted for at least six months after it had been specifically informed of the requirement for its towers in Texas, we conclude an additional upward adjustment to \$6,000 would be appropriate. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that KFW is apparently liable for a \$6,000 forfeiture.

7. We direct KFW to submit a statement signed under penalty of perjury by an officer or director of KFW stating: (1) that it is observing visually the Tower's lights on a daily basis or has installed an automatic monitoring system for the Tower's lights in compliance with section 17.47(a) of the Rules; and (2) that all of the lights on the Tower are functioning. If the lights have not yet been repaired, we direct KFW to provide a timetable for when the repairs will be complete and a certification that KFW has continued to notify the FAA of the lighting outage to ensure that a NOTAM for its tower remains current. This statement must be provided to the Kansas City Office at the address listed in paragraph 11 within fifteen days of the release date of this *NAL*.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Rules, KFW Communications LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for violations of section 17.47 of the Rules.¹⁷

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, KFW Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that KFW Communications LLC **SHALL SUBMIT** a statement as described in paragraph 7 to the Kansas City Office within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

11. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card,

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See *KFW Communications LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032540003 (Houston Office, rel. February 4, 2010); *KFW Communications LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032540004 (Houston Office, rel. February 4, 2010). See also *Forfeiture Policy Statement*, Memorandum Opinion and Order, 15 FCC Rcd 303, 304 (1999) (“[t]he statute says that the issuance of an NAL shall not be used against a person unless the forfeiture has been paid or the person is subject to a final court order to pay. It does not say that the facts underlying prior NALs shall not be used against a person.”).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.47.

an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. KFW Communications LLC shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 NE Colbern Road, 2nd Floor, Lee's Summit, MO, 64081, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to KFW Communications LLC at P.O. Box 479, Bedford, TX 76021.

FEDERAL COMMUNICATIONS COMMISSION

Robert C McKinney
District Director
Kansas City Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.